

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Devante Joseph,

Petitioner,

–v–

United States of America,

Respondent.

15-cr-95 (AJN)

ORDER

ALISON J. NATHAN, District Judge:

On April 12, 2016, the Government charged Devante Joseph in a four-count indictment. Dkt. No. 97. On December 12, 2016, he pleaded guilty to Counts One and Four, charging him with participating in a racketeering conspiracy in violation of 18 U.S.C. § 1962(c) and brandishing a firearm in relation to a racketeering conspiracy in violation of 18 U.S.C. § 924(c)(1)(A)(ii) respectively.¹ On April 12, 2017, the Court sentenced Joseph to 18 months' imprisonment for Count One and 84 months' imprisonment for Count Four, to be served consecutively, followed by three years of supervised release.

On November 8, 2019, Joseph filed a petition to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255 in light of the Supreme Court's decision in *United States v. Davis*, 139 S. Ct. 2319 (2019). Dkt. No. 2681. Joseph's conviction on Count Four can no longer stand after *Davis*, because a racketeering conspiracy qualifies as a "crime of violence" only under the now-stricken residual clause of 18 U.S.C. § 924(c)(3). *Davis*, 139 S. Ct. at 2336.

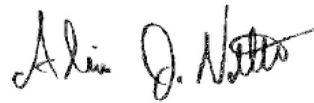
As noted at the April 23, 2020 resentencing in this matter, Joseph's petition for a writ of habeas corpus is therefore GRANTED and his conviction on Count Four is VACATED. The

¹ Though Count Four of the indictment charged Joseph with using a firearm in relation to a racketeering conspiracy in violation of 18 U.S.C. § 924(c)(1)(A)(iii), he pleaded guilty to brandishing a firearm in relation to a racketeering conspiracy in violation of 18 U.S.C. § 924(c)(1)(A)(ii).

special assessment imposed on Count Four under 18 U.S.C. § 3013 is also VACATED. The Court resentenced Joseph on Count One to 90 months' imprisonment and three years of supervised release.

SO ORDERED.

Dated: April 24, 2020
New York, New York

A handwritten signature in black ink, appearing to read "Alison J. Nathan", is positioned above a horizontal line.

ALISON J. NATHAN
United States District Judge